

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DAVID J. NELSON,

Petitioner,

v.

TERESER A. BANKS, et al.,

Respondents.

} Case No. CV 10-4398 PA (AN)  
} ORDER DISMISSING HABEAS  
} PETITION FOR LACK OF  
} JURISDICTION

**I. Introduction**

On June 15, 2010, petitioner David J. Nelson (“Petitioner”) filed his pending petition for a writ of habeas corpus (“Petition”) pursuant to 28 U.S.C. § 2241 (“§ 2241”). For the reasons discussed below, the reference to the magistrate judge is vacated and the Petition is summarily dismissed for lack of jurisdiction.

**II. Discussion**

**A. Standard of Review**

“Federal courts are always under an independent obligation to examine their own jurisdiction, . . . and a federal court may not entertain an action over which it has no jurisdiction.” *Hernandez v. Campbell*, 204 F.3d 861, 865 (9th Cir. 2000) (per curiam; citations and quotations omitted); *see also* Fed. R. Civ. P. 12(h)(3) (“If the court

1 determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the  
 2 action.”) Local Rule 72-3.2 of this court further provides that “if it plainly appears from  
 3 the face of the [habeas] petition and any exhibits annexed to it that the petitioner is not  
 4 entitled to relief, the Magistrate Judge may prepare a proposed order for summary  
 5 dismissal and submit it and a proposed judgment to the District Judge.”

6 **B. Analysis**

7 Petitioner alleges he is federal inmate number 15151-180 and that he is imprisoned  
 8 at the Federal Correctional Institution (FCI II) in Victorville, California (“Victorville  
 9 FCI”). The official records of the Federal Bureau of Prisons (“BOP”), which are available  
 10 at [www.bop.gov](http://www.bop.gov), confirm that Petitioner is confined at the Victorville FCI II. However,  
 11 the BOP’s records disclose Petitioner’s true name is Robert David Neal, not David J.  
 12 Nelson as he states in the Petition, and that Petitioner’s release date is January 28, 2031.

13 The Petition represents Petitioner is currently imprisoned pursuant to a sentence  
 14 for a wire fraud conviction that was imposed against Petitioner in case no. 3:06-CR-335.  
 15 (Pet. at 1.) PACER records establish Petitioner sustained his sentence in the Northern  
 16 District of Texas in case no. USDC No. 3:06-CR-335, and the Fifth Circuit’s related  
 17 opinion affirming Petitioner’s wire fraud conviction states Petitioner is currently serving  
 18 a 327-month sentence. *United States v. Robert David Neal*, no. 07-11047, op. at 1 (5th  
 19 Cir. Sept. 24, 2008) (“Neal”) The Fifth Circuit’s opinion in *Neal* also reveals Petitioner  
 20 is known by at least two other aliases, that he is an inveterate fraudster and con artist who  
 21 has previously been convicted of filing false tax returns (for which he served a twenty-  
 22 seven month prison term), and that he brazenly drafted a phony court order and forged the  
 23 federal district judge’s signature in order to falsely alter a condition of his supervised  
 24 release in his tax fraud case. *Neal* at 2.

25 Regardless, this court lacks jurisdiction under § 2241 because the purported claim  
 26 is not directed at the execution of his sentence stemming from his wire fraud sentence.  
 27 See *Hernandez*, 204 F.3d at 864 (holding a § 2241 habeas petition is the proper  
 28 mechanism for a federal prisoner seeking to challenge the manner, location or conditions

1 of the execution of his sentence). Indeed, the purported claim is not directed at the  
2 execution of his sentence and is patently frivolous as a matter of fact and law because it  
3 is directed at a *civil* judgment entered against him in an unrelated case filed in the United  
4 States District Court for the Northern District of California. Specifically, Petitioner  
5 claims “[t]his Petitioner is being held in violation of a final court judgement which states  
6 otherwise.” (Pet., ¶9(a).) But the judgment he refers to is not the judgment entered in  
7 case no. 3:06-CR-335. Rather, Petitioner expressly alleges the judgment that his claim  
8 is based upon is the “final judgment in case number 4:09-05162-PJH in the United States  
9 District court for Northern California.” (*Id.*) PACER records establish this Northern  
10 District of California case is a *civil* case where Petitioner ostensibly stipulated to a civil  
11 judgment to be entered against him and in favor of a plaintiff named David J. Nelson.  
12 *Nelson v. Neal*, no. C 09-5162 PJH, Amended Judgment (N.D. Cal. Mar. 16, 2010)  
13 (“*Nelson* lawsuit”). The court also observes the purported signatures of David J. Nelson  
14 on the complaint (dkt. 1) and the notice of acceptance of offer (dkt. 5) are suspiciously  
15 dissimilar and tend to indicate the *Nelson* lawsuit may be another one of Petitioner’s many  
16 frauds. Indeed, in addition to creating a phony order and forging a federal district judge’s  
17 signature, the Fifth Circuit’s *Neal* opinion also states:

18 Following indictment, Neal sent numerous letters from prison  
19 in which he attempted to coerce testimony from witnesses  
20 concerning the scope of the deal with ECI and Doctors  
21 Community. Neal wrote to Lawrence Hoover, who had helped  
22 Neal to incorporate his bogus companies, stating that if they  
23 were able to “lift [the ECI deal] off of us, the dollar amount of  
24 fraud they have on us is minimal.” According to the testimony  
25 of FBI Special Agent Jody Windle, Neal also threatened the life  
26 of the Assistant U.S. Attorney prosecuting the case, attempted  
27 to recruit people to continue the scheme after he was arrested,  
28 and planned to engage in insurance fraud after serving his

1 sentence. His letters detailed plans to have his fingerprints  
2 permanently altered, so that he could flee the country and  
3 commit frauds with impunity from an offshore location.

4 *Neal* at 3. In any event, to the extent Petitioner wishes to challenge the civil judgment in  
5 the *Nelson* lawsuit, he must do so by making the appropriate motion in the Northern  
6 District of California or by seeking an appeal in the time and manner required by the  
7 applicable Federal Rules of Appellate Procedure.

8 Finally, to the extent Petitioner wishes to attack his underlying sentence for his  
9 wire fraud conviction, he must do so by way of a motion attacking his sentence brought  
10 pursuant to 28 U.S.C. § 2255, and that the motion must be filed with the sentencing court,  
11 which is the Northern District of Texas. § 2255(a); *Stephens v. Herrera*, 464 F.3d 895,  
12 897 (9th Cir. 2006) (“The general rule is that a motion under 28 U.S.C. § 2255 is the  
13 exclusive means by which a federal prisoner may test the legality of his detention, and  
14 that restrictions on the availability of a § 2255 motion cannot be avoided through a  
15 petition under 28 U.S.C. § 2241.”)

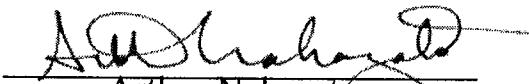
16 **III. Conclusion**

17 Based upon the foregoing, the reference to the magistrate judge is vacated, and the  
18 pending Petition is summarily dismissed for lack of jurisdiction. The clerk is directed to  
19 enter a judgment of dismissal and notify Petitioner.

20  
21 DATED: June 22, 2010

  
22 PERCY ANDERSON  
UNITED STATES DISTRICT JUDGE

23  
24 Presented by:

25   
26 Arthur Nakazato  
United States Magistrate Judge  
27